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SUBJECT: PROPOSAL FOR A NEW UNESCO STANDARD-SETTING INSTRUMENT ON
INDIGENOUS AND ENDANGERED LANGUAGES STAYS ALIVE BUT ITS NEXT STEPS

ARE UNCERTAIN

REF: (A) 08 PARIS 1029 (B) PARIS FR 693

¶1. Summary. UNESCO's Executive Board at its 181st session adopted a decision that ignored three of its previous decisions that had set the holding of an experts' meeting and a consultation with indigenous peoples as key pre-conditions for further consideration of a possible new UNESCO standard-setting instrument on protecting indigenous and endangered languages. Despite U.S. objections that doing so would move the process forward prematurely, the Board decided to inscribe this issue on the UNESCO General Conference's (GC) provisional agenda "for examination" when that body meets this fall at its 35th session. The decision left unclear, however, whether the GC would be expected at that time to approve the start of negotiations on a draft text of such an instrument, or would be expected only to agree that continued UNESCO reflection is needed on several still unresolved but important issues, such as, among others, whether such an instrument should take the form of a declaration, recommendation, or convention. In view of this ambiguity, U.S. vigilance and continued diplomacy will be needed to help ensure that UNESCO's next steps on this very sensitive matter are in line with the measured, more cautious approach suggested in the preliminary feasibility study. End Summary.

¶2. In a rare display of balance and objectivity with respect to UNESCO standard-setting instruments, UNESCO's Secretariat produced a crisply analytical, informative, and cautionary preliminary study regarding issues that needed to be addressed in preparing a proposed international standard-setting instrument on protection of indigenous and endangered languages. The analysis contained in that study recognized that there already exists an abundance (not less than 13) of relevant international instruments (of both a binding and non-binding character) that contain provisions that can help protect languages. Importantly, the study advised against taking a rights-based approach in a UNESCO instrument on protecting languages. Moreover, the study outlined the difficult choices that must be made in deciding the purpose and scope of such a standard-setting instrument. It underlined the need to defer to the speaker communities themselves in deciding whether and how their languages are to be revitalized and maintained. It even cast doubt on the feasibility of drafting such an instrument that would be binding. A key conclusion in the study was the desirability of engaging in further systematic observation of existing standard-setting instruments and the efficacy of national and regional policies for protecting languages, before starting the process now of drawing up a new instrument, advising against any "rash" decisions about what strategy to follow.

¶3. Building upon these potent and sensible observations in the preliminary study, the U.S. reminded the Board that this item has been on its agenda since the 176th Executive Board session at the request of Venezuela. From its inception, Venezuela had promised to provide the necessary extra-budgetary funds to finance the experts' meeting and consultation with representatives of the indigenous

communities regarding the desirability of a UNESCO standard-setting instrument. It was clear to all, however, that Venezuela had failed to honor its pledge, to date. We further reminded that at past Board sessions, a number of delegations from diverse geographic regional had joined the U.S. in lauding the wisdom of first holding an experts meeting and holding consultations with indigenous representatives, as key procedural pre-conditions, before embarking down the path towards the adoption of a new instrument. Also, many of those same countries (as recently as the 180th Board session) had agreed with the U.S. that holding a real, face-to-face experts meeting at UNESCO headquarters would also enable many delegations to learn from those experts directly and in the process become better informed about what such an instrument should pragmatically entail.

¶4. At the 181st Board sessions, delegations in their opening remarks did variously express words of caution and the need for due deliberation before rushing to move this proposal forward. These included: Chile ("preliminary study needs clarification"); Cote d'Ivoire ("supports the U.S., Norway and others"); Colombia ("framework of a new instrument should be prepared first by an experts meeting"); Egypt ("many areas need clarification"); France (questions the "value added" of a new instrument and urged holding the "experts meeting soon"); India ("the preliminary study needs supplementary consideration"); Hungary, Lithuania, Malaysia ("needs further reflection"); Norway, Senegal, Tanzania (the "process is incomplete"); and Thailand.

¶5. Brazil, however, became the single-handed spoiler. As it had done from the beginning when Venezuela first proposed this idea, Brazil took a very hard line and insisted that this matter could not wait any further for an experts meeting to be held. Brazil also requested a legal opinion from the Legal Adviser on whether the failure to hold the experts meeting and consultation, constituted legal impediments to sending forward a proposal to the GC to approve negotiation of a new standard-setting instrument on indigenous and

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endangered languages. An assistant Legal Adviser, in response, ruled that the preliminary study on the proposed instrument had met the technical requirements of UNESCO's special rules of procedure applicable to the preparation of certain UNESCO instruments.

¶6. The U.S. immediately challenged this legal ruling, asserting that while the generic pre-conditions for approving new instruments may have been met, the Executive Board had broadened the preconditions with the requirement to first hold an experts' meeting and a consultation with indigenous people. The broadened requirements could not simply be ignored after repeated Board approval. Unhappily, that adverse legal ruling suddenly turned the tide in the room for a large number of delegations, including many of the same delegations that had earlier voiced the need for caution and further reflection. The U.S. - alone in objecting to the validity of the legal ruling - was faced with choosing between calling for a vote on this item or allowing the item to be adopted over our objection without blocking consensus. In the press of the moment, we chose the latter.

¶7. Comment: Regrettably, the kind of haphazard, undisciplined decision-making reflected in the adoption of this Executive Board decision is too often indicative of the many UNESCO Member States who easily gloss over important substantive issues and related considerations, in order to appear "politically correct." This holds particularly true when emotive issues, such as protecting indigenous and endangered languages, are involved. Consequently, the preliminary study is now on its way to the General Conference, but minus the benefit of what might have been learned had the Board remained faithful to the pre-conditions of holding an experts' meeting and consulting with representatives of indigenous people as an integral part of the preliminary study process.

¶8. Comment (continued). It is not at all clear what the GC will

consider to be its most appropriate next step - give its blessing to opening formal negotiations on a draft text or agree that continued UNESCO reflection is needed on several still unresolved but pivotal issues, such as (among others that were cited in the preliminary study) whether such an instrument should take the form of a declaration, recommendation, or convention. One small consolation in the decision is that the U.S. was able to keep in a request to the Director-General to take several important steps recommended in the preliminary study and also to proceed with convening the meeting of experts, including representatives of indigenous peoples, as called for in several previous Board decisions. If that experts' meeting takes place before the fall GC session, it will at least enable the GC to make a more informed decision about how to act on this proposal. If that meeting fails to take place, however, the U.S. should seek (in concert with others) to use this important flaw in the process to persuade the 35th GC session that the proposal is not yet ready to move to the next stage, namely negotiations. If we are persuasive, it would put off the project for another two years, and fully allow delegations the needed additional time to reflect and envision an appropriate instrument on this subject.

¶ 9. The Board's action at this session showing favor toward the eventual adoption of a (binding or non-binding) instrument on languages needs to be seen in a broader context, i.e., in tandem with the Board's decision also taken at this session to endorse the negotiation of a new standard-setting instrument on historic urban landscapes (see ref (b)). Together, these two Board actions appear to signal the effective end of a three-year moratorium at UNESCO on initiating new standard-setting and normative instruments. They may be ushering in a period of renewed UNESCO "legislative" activism, at least within its core mandate of "Culture". For all of the above reasons, U.S. vigilance and continued active diplomacy will be needed to help ensure that UNESCO's next steps are fully in line with the measured, more cautious approach suggested in the preliminary study on this very sensitive matter of protecting indigenous and endangered languages. End Comment.

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